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10/520,231

01/04/2005

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EXAMINER

MAI, HAO D

ART UNIT

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3732

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|-------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/520,231 | Applicant(s) TALJAARD, ANDRE JOHAN | |
| | Examiner Hao D. Mai | Art Unit 3732 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>08/08/2005 and 01/04/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, **the two or more medical tube guide means (claim 15)** must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: the limitation “the medical tube” (line 9) lacks antecedent basis. Appropriate correction is required.

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Claim Rejections - 35 USC § 101

4. **Claim 16** is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claim 16** is further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 provides for the use of a medical tube guiding device for guiding an endo-tracheal tube into a mouth of a patient, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

7. **Claims 19-20** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that they fail to point out what is included or excluded by the claim language. These claims are omnibus type claims. See MPEP 2173.05(n), 706.03(d).

8. *Note that in view of rejections of claims 16, and 19-20 above, these claims are further rejected under prior arts below as best understood.*

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 1-7, 9-12, 14, and 19-20, are rejected under 35 U.S.C. 102(b) as being anticipated by Cameron (1,389,436).**

11. **Regarding claims 1-7, 9-12, 14, and 19-20, Cameron discloses a dental device comprising two patient engaging portions (9) each configured to be dental arch (hooks 8) having approximate bite size and dimensions of the patient to engage the upper and lower jaw of the patient. The two patient engaging portions are biased apart leaving the patient's mouth unobstructed, providing a working gap between them and (Fig. 1; page 2 lines 44-45). The two patient engaging portions are in the form of two arms (5) that pivotally meet at the apex, forming a coil spring (6) keeping the two arms resiliently biased (page 2, lines 38-39). The coil spring (6) can be a medical tube guiding means by having a medical tube be inserted through its eye.**

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. Claims 8, 13, 16, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (1,389,436) in view of Bradley et al. (5,626,128).

14. Regarding claims 8 and 13, Cameron teaches of a dental device that can be used as a medical tube guiding device according to claim 1. Cameron however failed to disclose a securing means (claim 8), a slip resistant portion (claim 13) to inhibit free movement of the medical tube.

15. Bradley et al. teach of a endo-tracheal tube fixation device having a securing means (clamp 44) that has a slip resistant interior surface for securely engaging and gripping the endo-tracheal tube (column 4 lines 29-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the securing means (clamp) with slip resistant interior surface in the Cameron's device to prevent free movement and slippage of the medical tube as taught by Bradley et al.

16. Regarding claims 16, 18, and 21, Cameron and Bradley et al. teach of the device for keeping the patient's mouth open by biasing the upper and lower jaws while having medical tube holder to inhibit free movement of the medical tube. Although Cameron and Bradley et al. are silent to the method of using such device, the method of using such device to bias a patient's teeth while guiding the medical tube into the patient mouth is obviously and naturally carried out in the use of the device.

17. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cameron (1,389,436) in view of Levisman (6,702,739 B2) and further in view of Bertoch (6,755,191 B2).

18. Cameron teaches of a dental device that can be used as a medical tube guiding device according to claim 1. Cameron however fails to disclose two or more medical tube guide means.

19. Levisman discloses a retractor having very similar structures to Cameron's device. Levisman's retractor has two or more coil eyes (53 in Fig. 10) that can be medical tube guiding means. Bertoch et al. teach of a securing device for an endotracheal tube having two clamps (11 in Fig. 6a) for holding two

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endo-tracheal tubes (column 5, lines 22-24). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include two or more medical tube guiding means in the form of the coil eyes as disclosed by Cameron and Levisman et al. so that the device can hold two or more medical tubes as taught by Bertoch et al.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Joutras (1094575) and Eldreth (5769635) have been included because they disclose medical tube guiding devices that also have means to bias the patient's jaws.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao D. Mai whose telephone number is (571) 270-3002. The examiner can normally be reached on Mon-Thur 7:30am - 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HDM 7/20/2007

/Cary E. O'Connor/

Primary Examiner

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